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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

**In re:**

**PG&E CORPORATION**

**-and-**

**PACIFIC GAS AND ELECTRIC  
COMPANY,**

**Debtors.**

- ☐ Affects PG&E Corporation
- ☐ Affects Pacific Gas and Electric Company
- ☒ Affects both Debtors

*\*All papers shall be filed in the Lead Case,  
No. 19-30088 (DM)*

Bankruptcy Case  
No. 19-30088 (DM)

Chapter 11  
(Lead Case)  
(Jointly Administered)

**REPLY BRIEF OF THE OFFICIAL  
COMMITTEE OF TORT CLAIMANTS  
IN SUPPORT OF ITS MOTION FOR  
STANDING TO PROSECUTE CLAIMS  
OF THE DEBTORS' ESTATES**

**Hearing**

Date: April 7, 2020  
Time: 10:00 a.m. (Pacific Time)  
Place: Courtroom 17  
450 Golden Gate Ave., 16<sup>th</sup> Fl.  
San Francisco, CA 94102

**Objection Deadline: March 25, 2020  
Reply Deadline: March 31, 2020**

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1 The TCC<sup>1</sup> hereby files this reply brief in support of its Motion for entry of an order  
2 granting the TCC standing to file a complaint in substantially the form attached to the Motion,  
3 and in response to the Opposition (the “Opposition”) filed by PERA.

4 The standard that applies to the TCC’s Motion is whether it has presented a colorable  
5 claim to protect the interests of Fire Victims, not whether it has proven by motion that the  
6 Shareholder Complaint fails to plead valid securities claims.<sup>2</sup> The latter issue will be presented in  
7 a future motion for summary judgment, and is summarized in the Motion, and below, to  
8 demonstrate the colorable nature of the TCC’s proposed complaint. Where subordinated former  
9 securities holders are attempting to recover insurance proceeds that are intended by a debtor’s  
10 plan to be available for payment to unsecured creditors, an injunction is appropriately issued.  
11 That colorable claim for injunctive relief, alone, is all that is necessary to demonstrate the  
12 appropriateness of standing. The Motion is timely, as there is an ongoing mediation ordered by  
13 this Court that threatens to dilute or destroy remaining insurance coverage for the benefit of Fire  
14 Victims.

15 The Opposition presents arguments that are neither relevant to this standard, nor  
16 applicable to the arguments of the TCC. The TCC is **not** arguing that a **properly** pleaded  
17 securities claim for damages to a discrete group of securities holders caused by actionable false  
18 statements that materially changed the information available to potential investors could be a  
19 derivative claim. Rather, the TCC is arguing that the Shareholder Complaint does not plead such  
20 claims. It does not properly plead valid securities claims because no reasonable investor could  
21 have ignored the reality of the Butte Fire and its causation by vegetation management failures,  
22 ignored the reality of statewide states of emergency pertaining to wildfire risks, ignored the North  
23 Bay Fires and their causation by vegetation management failures, ignored the billions in liabilities  
24 asserted against the Debtors arising from wildfires, and ignored the declining stock price, and  
25 relied instead on puffery in press releases to justify safe investments in PG&E securities, or that  
26 such puffery could have had the effect of “inflating” PG&E’s stock value despite the impact of

27 \_\_\_\_\_  
28 <sup>1</sup> Capitalized terms not defined herein carry the meaning ascribed to them in the Motion.

<sup>2</sup> *La. World Exposition, Inc. v. Fed. Insurance Co. (In re La. World Exposition, Inc.)*, 832 F.2d 1391, 1397  
(5th Cir. 1987) (requiring showing “that the claim be colorable”).

1 actual wildfires. Ongoing promises in press releases of regulatory compliance do not state  
2 securities claims when they are made in a real-world context that renders the statements nothing  
3 more than puffery and public relations. When those baseless allegations of “false statements” are  
4 disregarded under applicable federal securities law, the complaint that remains is a very detailed  
5 complaint alleging mismanagement that caused billions of dollars of damages—just like every  
6 other pending Self-Described Derivative Action.

7 The TCC’s proposed injunctive relief claim is the claim that will protect Fire Victims,  
8 while the declaratory relief claim will inform this Court whether that injunctive relief should be  
9 temporary or permanent, as case law on injunctions against shareholder litigation splits along two  
10 lines: those that permanently enjoin an action because it asserts claims that, at their core, are  
11 derivative, and those that temporarily enjoin a direct securities action to give a post-confirmation  
12 trustee sufficient time to act to protect the claims of the trust against the same insurance policies.

13 Once the TCC has filed its complaint and files a motion for a preliminary injunction, it  
14 will request a preliminary injunction pending resolution of the declaratory relief claims, in order  
15 to permit this Court to properly determine the proper timing of the injunction.

16 The Debtors’ agreement to stipulate to this standing is a recognition that the TCC has a  
17 valid claim to pursue, and valid grounds to protect the interests of Fire Victims. The Motion  
18 should be granted.

## 19 **DISCUSSION**

### 20 **A. The TCC’s Actions Are Not Merely Timely, They Are a Necessity**

#### 21 **1. The Pending Mediation Threatens Insurance Coverage for Fire Victims**

22 The TCC’s Motion is timely. This Court has ordered mediation of the Former  
23 Shareholders’ claims, which is ongoing. Any settlement of those claims could not only dilute  
24 insurance proceeds that must be preserved to compensate Fire Victims who enjoy a higher  
25 priority for recovery under the Bankruptcy Code, but any settlement also risks destroying any  
26 recovery by Fire Victims given the nature of the Shareholder Complaint’s allegations.

27 Each of the Debtors’ D&O policies contain a single “Wrongful Act” exclusion, which  
28 provides that any payout or settlement of the Pending Action—even a nuisance-value

1 settlement—could erase as much as a half billion dollars of policy limits, most of which should be  
2 paid to Fire Victims by judgments or settlement in the other pending derivative actions.

3 The Debtors’ D&O insurance policies provide that if the insurers make any payment on  
4 account of a settlement or judgment in any lawsuit, then coverage is excluded for any other  
5 lawsuit that pleads the same “wrongful act” or any “wrongful act” that shares any “common  
6 nexus” with any wrongful acts pleaded in the settled or resolved action. The wording of the  
7 exclusion is exceedingly broad.

8 As addressed in the Motion, the Shareholder Complaint filed in the Pending Action, and  
9 every complaint filed in every pending self-described derivative shareholder action<sup>3</sup> (the “Self-  
10 Described Derivative Actions”), all plead the same allegations of mismanagement by the Debtors  
11 causing the North Bay and/or Camp Fires, and the billions of dollars in liabilities that arose from  
12 those fires. The Debtors’ D&O insurers can be expected to argue that a settlement of any one of  
13 these actions—including the Pending Action—wipes out all insurance coverage for all of the  
14 remaining actions. The Shareholder Complaint pleads over a hundred pages of mismanagement  
15 allegations that are the same as the allegations pleaded in the Self-Described Derivative Actions.  
16 A settlement of the Shareholder Complaint would improperly provide subordinated shareholders  
17 with a recovery, while risking the deletion of an asset worth hundreds of millions of dollars that  
18 has been assigned to the Fire Victim Trust.

19 This isn’t an unjustified concern. It is simple case law. *See, e.g., Continental Cas. Co. v.*  
20 *Wendt*, 205 F.3d 1258, 1264 (11th Cir. 2000) (holding that claims from different plaintiffs were  
21 interrelated for purposes of same “wrongful act” exclusion where they were based on “same  
22 course of conduct”).

23 There are limits to this argument. For example, the insurers couldn’t successfully argue  
24 that their settlement of the San Bruno gas pipeline explosion also settled the pending shareholder  
25 lawsuits simply because the Pending Action and Self-Described Derivative Actions all allege that  
26 the San Bruno explosion was an example of past mismanagement. Under Ninth Circuit law, there  
27 would have been intervening business judgment decisions that would confirm that the current  
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<sup>3</sup> The lawsuits listed as items (a) through (f) on Page 5 of the Motion.

1 shareholder actions concern different “wrongful acts.” *Eureka Federal Sav. & Loan Asso. v.*  
2 *American Casualty Co.*, 873 F.2d 229, 235 (9th Cir. 1989) (“intervening business decisions”  
3 during period of common pattern of conduct separated lawsuits alleging different damages from  
4 wrongful act exclusion).

5 But any settlement of the Pending Action would be a settlement of a lawsuit in which the  
6 only properly pleaded wrongful acts are the same allegations of mismanagement causing fire-  
7 related damages as pleaded in all of the Self-Described Derivative Actions, and such a settlement  
8 could wipe out a half billion dollars of insurance coverage, no matter how small the settlement  
9 amount might be. It is for these reasons that the TCC has to take the Pending Action very  
10 seriously. Not because it is a valid lawsuit, but because it has pleaded the same mismanagement  
11 claims and then added a veneer of misrepresentation allegations that fail to satisfy the standard for  
12 proper direct securities claims.

13 This is the same position argued by some of the officers and directors in one of their  
14 Motions to Dismiss the Pending Action, currently pending before the District Court, who argue  
15 that the Shareholder Complaint is, at its core, another mismanagement complaint.<sup>4</sup>

16 The TCC’s position is consistent with the defendants, except that it adds one element.  
17 The D&O defendants ask the District Court to dismiss the Pending Action because it is not a valid  
18 securities action. But dismissal is not relief that this Court may grant. And even if the District  
19 Court dismisses the Pending Action, it is likely to be dismissed with leave to amend while the  
20 mediation will continue to drive the action towards settlement. Therefore, the TCC asks this  
21 Court to address the relief that it may extend, in the form of declaratory relief and injunctive  
22 relief. Because the Pending Action is a mismanagement complaint facially disguised as a  
23 Securities Act complaint, it may be properly recognized as a derivative action that is no different  
24 from the same mismanagement claims pleaded in the pending Self-Described Derivative Actions.  
25 And, because its ongoing prosecution risks destroying a substantial recovery for creditors, it may  
26 be enjoined.

27  
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<sup>4</sup> See Case 5:18-cv-03509-EJD, Dkt. No. 155-1, pp. 14:1-10, 18:6-12.

1           **2. The Shareholder BK Claims Threaten the Debtors' Equity Backstop**

2           This Court has permitted shareholders who fall within the Pending Action's putative class  
3 to file individual proofs of claim, and has confirmed that those recoveries will be subordinated to  
4 the same level as equity, thereby diluting the recoveries of equityholders under the Plan. That  
5 dilution will also impact the equityholders and investors who are lined up to provide the Debtors  
6 with an equity backstop.

7           But a timely determination that the Pending Action is not a valid securities action, because  
8 the sole actionable allegations could only state derivative claims, would address this concern by  
9 wiping out any claims the Former Shareholders could assert in these Chapter 11 cases. The  
10 TCC's proposed Complaint is not merely timely, it is integral to a successful reorganization by  
11 these Debtors.

12           **B. Why Does the TCC Say the Pending Action Is Not a Valid, Direct Securities Action?**

13           As noted above, the TCC's declaratory relief claim will inform this Court whether the  
14 requested injunctive relief should be permanent because the claims are derivative or invalid, or  
15 temporary in order to give the Fire Victim Trust time to protect the interests of Fire Victims.  
16 *Compare Cottonwood P'ship, L.L.P. v. Kivisto (In re SemCrude L.P.)*, 2012 U.S. Dist. LEXIS  
17 163236 (D. Del. November 15, 2012) (affirming order enjoining derivative shareholder claims  
18 against debtor's accounting firm where injuries were to the corporation, and claims belonged to  
19 bankruptcy estate); *Meglolia v. Maxwell*, 293 B. R. 443, 449 (N. D. Ill. 2003) (enjoining  
20 securities litigation to permit trustee to first pursue derivative claims and recover from insurance  
21 policies).

22           The Opposition appears to suggest that the TCC is arguing that a properly pleaded direct  
23 securities action can be a derivative action. That is not the case. The TCC will demonstrate in a  
24 future motion for summary judgment that the Shareholder Complaint is not a properly pleaded  
25 direct securities action, but is more of a business model than a valid complaint—an effort to  
26 distinguish itself from the flood of Self-Described Derivative Action by adding a layer of alleged  
27 “false statements” to the same mismanagement allegations pleaded in every Self-Described  
28 Derivative Action, and thereby obtain a settlement advantage. But the allegations of “false



statements” cannot state valid securities claims under applicable standards, particularly in a setting where every reasonable investor—and every Court in Northern California—was fully aware that the Debtors were causing wildfires by failing to implement proper vegetation management practices.

In order to allege a false statement on which a valid securities claim may be based, that false statement must be one that significantly altered the “total mix” of information available to an investor. It must:

in the view of a reasonable investor, have ‘significantly altered the ‘total mix’ of information made available.’ The statement must also be ‘mislead[ing],’ evaluated not only by ‘literal truth,’ but by ‘context and manner of presentation.’

*Singh v. Cigna Corp.*, 918 F.3d 57, 63 (2d Cir. 2019) (citations omitted).

An example of a statement that significantly alters the “total mix” of information available to an investor is the example provided in the Motion, whereby a pharmaceutical company announces a new cancer treatment. Such an announcement would materially alter how an investor would view an investment in that company.

The Shareholder Complaint does not contain a single allegation of a false statement that satisfies this standard. The allegations in the Shareholder Complaint that describe the Debtors’ mismanagement and damages are separated into a different section of the complaint from the allegations of alleged false statements. But when they are all organized together into chronological order, it tells a very different story.

For example, the Shareholder Complaint alleges that the North Bay Fires ignited on October 8, 2017 (¶ 246). In response to the North Bay Fires, PG&E’s stock dropped 6.7% on October 12, 2017, because “the market began to understand that PG&E’s safety regulation violations were likely a proximate cause of the North Bay Fires,” and “Investors started to be concerned regarding whether PG&E violated any regulations (e.g., failed to adequately trim trees) ...” (¶ 328-333) (emphasis added).

PG&E’s stock dropped another 16.5% on October 13, 2017, because PG&E filed an 8-K stating that PG&E’s “financial condition or results or operations could be materially affected,”

1 and “Investors understood” that the 8-K “signaled to the market that at least some of the North  
2 Bay Fires were caused by PG&E’s negligence or worse.” (§ 335-337) (emphasis added).

3 Commensurate with all of this real world information that fed the knowledge and  
4 understanding of “concerned” investors, there were three press releases or other communications  
5 in a one-week period between October 31 and November 5, 2017, in which PG&E made its usual  
6 claims about following “all applicable federal and state vegetation clearance requirement” and  
7 told investors that two years earlier it had doubled its spending on vegetation management, all of  
8 which are alleged to have been false. (§§ 249, 258, 264, 271). Statements such as these are mere  
9 puffery under the standard in *Singh*, and the cases cited therein, and do not meet the necessary  
10 detail that is required for actionable compliance statements. *Singh v. Cigna Corp.*, 918 F.3d at  
11 63 (describing the substantial detail required for a compliance statement to be actionable).

12 Despite the banality of these “false statements,” and despite the ongoing reality of the  
13 North Bay Fires and what investors “understood” about the ongoing decline of PG&E’s stock  
14 price, York made its **first** purchase of any of the Debtors’ securities that same month, Warren  
15 acquired stock and bond debt at the same time, and Mid-Jersey acquired bonds. (Dkts. 121-2,  
16 121-3 and 121-4). These aren’t misled investors. They are speculators who fully “understood”  
17 that massive wildfires had caused PG&E’s stock to begin plummeting in value, and made a  
18 conscious and informed decision to purchase securities based on real world information.

19 This sort of pleading is not permitted. It is understandable from a strategy perspective, as  
20 it allowed these Former Shareholders to plead a complaint that set it apart (facially) from all of  
21 the pending Self-Described Derivative Actions, provided them with relief from stay, and placed  
22 them into a position whereby they are now the sole D&O lawsuit that is negotiating a settlement  
23 with the Debtors. But this sort of business practice was recently savaged by the Second Circuit:

24 This case presents us with a creative attempt to recast corporate  
25 mismanagement as securities fraud. The attempt relies on a simple  
26 equation: first, point to banal and vague corporate statements affirming the  
27 importance of regulatory compliance; next, point to significant regulatory  
28 violations; and voila, you have alleged a prima facie case of securities  
fraud! The problem with this equation, however, is that such generic  
statements do not invite reasonable reliance. They are not, therefore,  
materially misleading, and so cannot form the basis of a fraud case.

1 *Singh*, 918 F.3d at 59-60. To hold otherwise would “bring within the sweep of federal securities  
2 laws many routine representations made by [companies].” *ECA & Local 134 IBEW Joint Pension*  
3 *Trust of Chi. v. JP Morgan Chase Co.*, 553 F.3d 187, 206 (2nd Cir. 2009).

4 In *Singh*, Cigna made a variety of statements concerning its purported compliance with  
5 applicable regulations, such as a 10-K stating that it had “established policies and procedures to  
6 comply with applicable requirements.” The subsequent drop in stock price was not caused by an  
7 external event such as a wildfire, but because of a public audit letter demonstrating that the  
8 statements were false, and Cigna was not in compliance with applicable requirements. In other  
9 words, unlike the PG&E case, there was actually a direct connection between the false statement  
10 and the drop in stock price. And yet, this did not create a direct shareholder claim, as the Second  
11 Circuit found that the statements did not significantly alter the “total mix” of information  
12 available to investors. 918 F.3d at 63 (concluding that alleged misstatements are “textbook  
13 example of ‘puffery’”).

14 Similarly, in *ECA*, plaintiffs alleged that JP Morgan Chase had made false statements,  
15 such as its claim that its “risk management processes [that] are highly disciplined and designed to  
16 preserve the integrity of the risk management process.” 553 F.3d at 205. The Court held that  
17 such statements were “puffery” that were “too general to cause a reasonable investor to rely upon  
18 them,” and could not “amount to a guarantee that its choices would prevent failures in risk  
19 management practices.” *Id.* at 206. *See also Singh*, 918 F.3d at 63 (“[G]eneral statements about  
20 reputation, integrity, and compliance with ethical norms are inactionable ‘puffery,’ meaning that  
21 they are too general to cause a reasonable investor to rely upon them.”); *City of Brockton Ret. Sys.*  
22 *v. Avon Prods.*, 2014 U.S. Dist. LEXIS 137387, 2014 WL 4832321, at \*15 (S.D.N.Y. Sept. 29,  
23 2014) (“Such statements are not actionable as securities fraud because investors do not rely on  
24 ‘generalizations regarding integrity, fiscal discipline and risk management.’”) (*quoting In re JP*  
25 *Morgan Chase Sec. Litig.*, 363 F. Supp. 2d 595, 632-33 (S.D.N.Y. 2005), and collecting other  
26 cases).

27 A general statement of compliance with regulations of laws, or promises of practices to  
28 ensure strong risk management processes, are insufficient to create a material, false statement for

1 purposes of pleading a federal securities claim. *Singh*, 918 F.3d at 63. Yet the Former  
2 Shareholders' entire case is a series of press releases and 8-K filings that made similar promises  
3 of puffery concerning regulatory and legal compliance, after the Butte Fire had been found to be  
4 caused by vegetation management failures, while the North Bay Fires were still smoldering and  
5 PG&E's vegetation management failures were found to be the cause, during two statewide states  
6 of emergency, and amidst a constant stream of information about a changing climate that is  
7 increasing the risks of wildfires. The entire Shareholder Complaint rests on finding that their  
8 putative class ignored what they already "understood" about fires, climate, and future risks, that  
9 was being reported every day in investment news, newspapers and elsewhere, and that they then  
10 invested in a self-imposed vacuum of information, relying on nothing but the puffery in PG&E's  
11 press releases and website information as guarantees that there would never be a wildfire that  
12 would cause a drop in stock price. That does not state a claim. It merely describes careless  
13 speculators who now seek to recover losses that reflect an intentional and knowing gamble, not  
14 actionable securities claims. The alleged false statements not only fail to satisfy the "total mix"  
15 standard of *Singh*, they aren't even connected to the alleged damages like the insufficient false  
16 statements in *Singh* and *ECA*.

17 These Shareholder Plaintiffs are no stranger to these arguments. In *City of Warren Police*  
18 *& Fire Ret. Sys. v. Foot Locker, Inc.*, 412 F. Supp. 3d 206 (E.D.N.Y. 2019), named Plaintiff  
19 Warren in this Pending Action was the lead plaintiff in *Foot Locker*, and had its complaint  
20 dismissed under *Singh* because, even "drawing all reasonable inferences," Warren's allegations of  
21 false statements failed to allege "an actionable statement or omission warranting 10(b) liability"  
22 under *Singh*. 412 F. Supp. 3d at 220.

23 It would be a travesty if these Former Shareholders were able to translate their baseless  
24 allegations of "misstatements" into a settlement (for any amount) that would have the effect of  
25 wiping out as much as a half-billion dollars of insurance coverage that should compensate Fire  
26 Victims for their losses while compensating speculative investors who purchased securities when  
27 they "understood" that an effect of the North Bay Fires was a plummeting stock price.  
28

1 When these baseless allegations of false statements are stripped away, what is left is a  
2 well-pleaded Complaint that details more than a hundred pages of mismanagement by the Debtors  
3 causing massive wildfires, and billions of dollars in liabilities to Fire Victims. They are the same  
4 allegations pleaded in each of the complaints filed in the Self-Described Derivative Complaint,  
5 and derivative claims for breach of fiduciary and other such causes of action are the sole claims  
6 that they may properly support.

7 Thus, like the Second Circuit’s ruling in *Singh*, the TCC seeks declaratory relief that  
8 recognizes the true nature of the Shareholder Complaint when the baseless allegations of  
9 misstatements are disregarded, and the remaining allegations of mismanagement are all that  
10 properly remain. *Singh*, 918 F.3d at 59 (“This case presents us with a creative attempt to recast  
11 corporate mismanagement as securities fraud.”).

12 The TCC’s future motion for summary judgment will demonstrate that, by its own  
13 admissions of what investors “understood” about the North Bay Fire and its impact on declining  
14 share prices, and by the baseless and “puffery” nature of alleged false statements that cannot erase  
15 the reality of wildfires caused by acknowledged failures in vegetation management practices, the  
16 Shareholder Complaint does not present valid, direct securities claims. What is left, at the core of  
17 the complaint, is mismanagement allegations that can only plead derivative claims.

18 The TCC has a colorable claim to have the Shareholder Complaint enjoined, either  
19 temporarily if the TCC does not prevail on its declaratory relief claim, or permanently if the TCC  
20 does prevail on its declaratory relief claim. Either way, the TCC has addressed the standard to  
21 obtain standing to file its proposed Complaint.

22 **C. The Effort to Distinguish Touch America Is Mistaken**

23 The effort of the Former Shareholders to distinguish the case *Williams v. McGreevey (In*  
24 *re Touch America Holdings, Inc.)*, 401 B.R. 107 (Bankr. D. Del. 2009), misstates the case. The  
25 shareholder action in Touch America was settled at mediation in 2004, in a global mediation with  
26 the creditor Trust represented by the TCC’s counsel in these instant cases, after which the parties  
27 engaged in five years of litigation over the settlement, leading to the published case. The Trust’s  
28 motion for summary judgment only addressed the derivative nature of the shareholders’ claim for

1 damages that sought recovery from the same insurance policies assigned to the Trust. The Trust  
2 did not challenge claims for declaratory relief, constructive trust, or against third parties, and  
3 those claims continued in litigation. The “second” action cited by the Former Shareholders is the  
4 same lawsuit, removed from state court to federal court. There was only one Montana Power  
5 shareholder lawsuit. The settlement was finally approved by the Bankruptcy Court in 2009, in  
6 conjunction with a larger settlement of all remaining claims in multiple actions. *See*  
7 Supplemental Declaration of David J. Richardson.

8 The case is directly on point for a variety of issues: (i) the appropriateness of standing first  
9 granted to the committee of unsecured creditors, then passed to the Trust; (ii) the appropriateness  
10 of resolving the derivative/direct issue by summary judgment in an adversary proceeding; and  
11 (iii) the standards that apply to such an analysis.

12 **D. The Positions of the Debtors and UCC Support the Requested Relief**

13 The Debtors have stipulated to the relief requested in the Motion. That, alone, should  
14 permit entry of the proposed order granting the requested relief.

15 The Official Committee of Unsecured Creditors has filed a statement [Dkt. No. 6475] that  
16 “supports the TCC’s request for standing” solely for the purposes described in the Motion, except  
17 for the requested finding in the proposed Complaint that any derivative claims stated in the  
18 Shareholder Complaint are among the “Assigned Claims” that are being assigned to the Fire  
19 Victim Trust under the Debtors’ Plan. The TCC is not opposed to revising its Complaint in this  
20 manner, with a full reservation of all rights on such issues.

21 Indeed, the Former Shareholders’ arguments in their Opposition that the derivative claims  
22 that are stated by their mismanagement allegations are not necessarily assigned to the Fire Victim  
23 Trust are red herrings. The Fire Victim Trust has many Self-Described Derivative Actions that it  
24 can take over and litigate for the benefit of Fire Victims. The primary issue with respect to this  
25 Pending Action is whether or not it should be enjoined temporarily (in a future motion) in order to  
26 ensure that subordinated shareholders do not deplete or destroy insurance coverage intended for  
27 the benefit of Fire Victims, or permanently if the allegations pleaded in the Shareholder  
28 Complaint can only state derivative mismanagement claims. That issue is for another day.

**CONCLUSION**

WHEREFORE, for all the reasons explained herein and in the Motion, the TCC respectfully requests that the Court enter the Proposed Order, substantially in the form attached to the Motion, and such other and any further relief as the Court may deem just and proper.

Dated: March 31, 2020

BAKER & HOSTETLER LLP

By: /s/ David J. Richardson

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Cecily A. Dumas

David J. Richardson

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Claimants*